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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

DAVID EDWARD COX

EB DOCKET NO. 05-

FCC-0ALJ RCD
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DATE OF HEARING: NOVEMBER 15, 2005

PLACE OF HEARING: WASHINGTON, D.C.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF

DAVID EDWARD COX
Amateur Radio Operator
and Licensee of
Amateur Radio
Station W50ER

EB Docket No.
05-232

File No.
11025-CL-P-672-A-89

Federal Communications Commission
Hearing Room A, TW A-363
445 12th Street, SW
Washington, D.C.

Tuesday,
November 15, 2005

BEFORE:

ARTHUR I. STEINBERG
Administrative Law Judge

NEAL R. GROSS
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APPEARANCES

On Behalf of the Federal Communications
Commission:

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I-N-D-E-X

| <u>Exhibit No.</u> | <u>Description</u> | <u>Mark</u> | <u>Recd</u> |
|--------------------|--------------------|-------------|-------------|
| Judge 1 | Hearing Order | 5 | 5 |
| EB 1 | Cox Affidavit | 7 | 7 |

Start Time: 9:32 a.m.

End Time: 9:39 a.m.

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P R O C E E D I N G S

(9:32 a.m.)

ADMINISTRATIVE JUDGE STEINBERG: We're on the record now. This is a pre-hearing conference in EB Docket number 05-232. By Order to Show Cause, DA 05-2015, released September 29, 2005, this case was designated for hearing on issues which seek to determine the effect of David Edward Cox' felony convictions on his qualifications to be and to remain a commission licensee, and to determine whether Mr. Cox' amateur radio license should be revoked. By order, FCC 05M-46, released October 5th, 2005, the Chief Administrative Law Judge appointed me to preside over this proceeding and scheduled a pre-hearing conference for this morning. And let me first take the appearances of the parties for Edward David Cox. Let the record reflect, no response. And for the Chief Enforcement Bureau.

MS. LANCASTER: Judy Lancaster.

ADMINISTRATIVE JUDGE STEINBERG: Okay. On October 6th, 2005, the Office of Administrative Law Judges mailed to Mr. Cox by certified mail - return

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1 receipt requested, the September 29th Order to Show
2 Cause and the October 5th order setting the date for
3 this conference. Copies were mailed to both addresses
4 specified in Paragraph 10 of the Order to Show Cause.
5 The Office of Administrative Law Judges has received
6 the return receipts from both of these mailings, and
7 the return receipts establish that both mailings were
8 received on October 11th, 2005. And at this time, I'd
9 like to identify as Judge's Exhibit 1 a two-page
10 document which shows the certified mail receipts. And
11 I have provided the reporter with two copies of the
12 document. And I'd like to at this time, without
13 objection, Ms. Lancaster, I presume.

14 MS. LANCASTER: Yes, sir.

15 ADMINISTRATIVE JUDGE STEINBERG: Receive
16 Judge's Exhibit 1.

17 (Whereupon, Judge's Exhibit 1
18 was marked and received.)

19 ADMINISTRATIVE JUDGE STEINBERG: Now I
20 understand, Ms. Lancaster, you also have return
21 receipts and an affidavit that you would like to talk
22 about.

1 MS. LANCASTER: Yes, sir. The
2 Investigations and Hearings Division also sent Mr. Cox
3 by certified mail a copy of the order to show cause,
4 a copy was sent to his home address, and also a copy
5 was sent to Catahoula Correctional Center, which is
6 the prison in which he is currently incarcerated. We
7 have return receipts from his home address signed by
8 Ruby Cox, and from Catahoula Correctional Facility, a
9 return receipt signed by Emmett Booker. Mr. Booker is
10 evidently the office manager at Catahoula Correctional
11 Center, and I've talked to him and asked him also --
12 he's also a notary, asked him to obtain the affidavit
13 of Mr. Cox verifying that Mr. Cox did receive a copy
14 of the Order to Show Cause.

15 I faxed the affidavit language to Mr.
16 Booker. He presented it to Mr. Cox. Mr. Cox signed
17 it, and Mr. Booker notarized it. In the affidavit,
18 Mr. Cox acknowledges that on or about October the 6th,
19 2005, he received a copy of the Order to Show Cause in
20 this case, and I would like to --

21 ADMINISTRATIVE JUDGE STEINBERG: You don't
22 have to write on the fax copy.

1 MS. LANCASTER: Okay.

2 ADMINISTRATIVE JUDGE STEINBERG: The
3 original is in transit. And you've got a fax, a
4 facsimile copy that's been signed by Mr. Cox.

5 MS. LANCASTER: Yes, sir.

6 ADMINISTRATIVE JUDGE STEINBERG: And the
7 original is in transit.

8 MS. LANCASTER: My understanding is, I
9 talked to the mailroom today in Maryland, the FCC
10 mailroom. It is there. It should be delivered to me
11 this afternoon or early tomorrow morning, at which
12 time I will be happy to bring it to your office and
13 have it incorporated into the record, if that's
14 acceptable.

15 ADMINISTRATIVE JUDGE STEINBERG: Okay.
16 Yes, why don't we mark the -- it's one-page. Is it an
17 affidavit or declaration? Affidavit.

18 MS. LANCASTER: It's an affidavit, a one-
19 page affidavit.

20 ADMINISTRATIVE JUDGE STEINBERG: And we'll
21 mark that for identification as Enforcement Bureau
22 Exhibit 1, and I will receive it at this time into

1 evidence.

2 (Whereupon, Enforcement Bureau
3 Exhibit No. 1 was marked and
4 received.)

5 ADMINISTRATIVE JUDGE STEINBERG: And then
6 the reporter - we don't have the original. When you
7 get the original, just make a couple of copies, bring
8 it to my office and we'll take care of marking it and
9 forwarding it, whatever we have to do.

10 MS. LANCASTER: Your Honor, would you also
11 like to have the return receipts that we received put
12 into evidence?

13 ADMINISTRATIVE JUDGE STEINBERG: I think
14 the affidavit is fine.

15 MS. LANCASTER: Okay.

16 ADMINISTRATIVE JUDGE STEINBERG: But you
17 keep hold of them.

18 MS. LANCASTER: I certainly will.

19 ADMINISTRATIVE JUDGE STEINBERG: Did I
20 receive that? I think I did. If I didn't say I
21 received it, then I receive Enforcement Bureau Exhibit
22 1. And then whenever you have it, just bring it. You

1 keep the original in your files, because originals
2 seem to get lost around here. And if there's ever any
3 question, I'd rather have a real person rather than a
4 file room having the original.

5 Okay. Section 1.91(c) of the Commission's
6 rules, and Paragraph 7 of the Order to Show Cause,
7 required Mr. Cox to file a written appearance stating
8 that he will appear at the hearing and present
9 evidence on the specified issues. Pursuant to
10 Paragraph 7 of the Order to Show Cause, the written
11 appearance was required to be filed within 30 days of
12 the release of the Order to Show Cause. Since the
13 Order to Show Cause was released on September 29th,
14 2005, the Notice of Appearance was due to be filed on
15 or before October 29th, 2005. However, since October
16 29th fell on a Saturday, the due date was October 31st.
17 No Notice of Appearance has been filed.

18 Section 1.92(a)1 of the Commission's
19 rules, as well as Paragraph 8 of the Order to Show
20 Cause provides that under the circumstances presented
21 here, a failure to file the requisite notice of
22 appearance constitutes a waiver of the right to a

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1 hearing. Consequently, pursuant to Section 1.92(c) of
2 the rules, and Paragraph 8 of the Order to Show Cause,
3 the presiding judge will issue an order reciting the
4 events and circumstances constituting a waiver of the
5 hearing, terminating the hearing proceeding, and
6 certifying the case to the Commission.

7 Do you have any comments, Ms. Lancaster?
8 Anything you want to add?

9 MS. LANCASTER: No, sir. I would ask that
10 you do that with all speed.

11 ADMINISTRATIVE JUDGE STEINBERG: I'll do
12 it in the speed in which I've been accustomed to
13 working. And let the record reflect laughter. Okay.
14 We'll go off the record right now, and hopefully we'll
15 never have to go back on the record. Thank you.

16 (Whereupon, the proceedings went off the
17 record at 9:39 a.m.)
18
19
20
21
22

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

DAVID EDWARD COX

Name of Hearing

EB DOCKET NO. 05-232

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

NOVEMBER 15, 2005

Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 10 inclusive, are the true, accurate and complete transcript prepared from the reporting by Bill Click (Reporter's Name) in attendance at the above identified hearing, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription statement of Work and have verified the accuracy of the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearings and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing or conference.

November 28, 2005 Bill Click

Date Legible Name and Signature of Reporter
Name of Company: Neal Gross Co.

November 28, 2005 Eileen Jackson

Date Legible Name and Signature of Transcriber
Name of Company: Neal Gross Co.

November 28, 2005 Kevin Murphy

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